

§ 4.20

servicing actions anticipated to occur in the near future (e.g., in conjunction with the next annual adjustment of Section 8 rents).

(c) If an applicant does not meet the \$200,000 disclosure requirement in § 4.7(b), an applicant must certify whether there is, or is expected to be made, available with respect to the housing project any other governmental assistance. The Department may also require any applicant subject to this subpart A to submit such a certification in conjunction with the Department's processing of any subsequent servicing action on that project. If there is other government assistance for purposes of the two preceding sentences, the applicant must submit such information as the Department deems necessary to make the certification and subsequent adjustments under Section 102(d).

(d) The certification under Section 102(d) shall be retained in the official file for the housing project.

Subpart B—Prohibition of Advance Disclosure of Funding Decisions

§ 4.20 Purpose.

The provisions of this subpart B are authorized under section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (42 U.S.C. 3537a) (hereinafter, Section 103). Both the provisions of Section 103 and this subpart B apply for the purposes of Section 103. Section 103 proscribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive that information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. Section 103 also authorizes the Department to impose a civil money penalty on a HUD employee who knowingly discloses protected information, if such a violation of Section 103 is material, and authorizes the Department to sanction the person who received information improperly by, among other

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things, denying assistance to that person.

§ 4.22 Definitions.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance does not include any contract (e.g., a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1).

Disclose means providing information directly or indirectly to a person through any means of communication.

Employee includes persons employed on a full-time, part-time, or temporary basis, and special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Human Resources appointment. However, "employee" does not include an independent contractor, e.g., a firm or individual working under the authority of a procurement contract.

Material or materially means in some influential or substantial respect or having to do more with substance than with form.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Selection process means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the FEDERAL REGISTER. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

§ 4.24 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person